



Texas Department of Insurance
Division of Workers' Compensation
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BENEFIT REVIEW CONFERENCE (BRC) INFORMATION FOR BENEFICIARIES IN A DEATH CLAIM

LIABILITY ISSUES: When the insurance company believes that the injured worker was intoxicated at the time of the injury, or if the worker's injury was the result of horseplay, his/her intention to injure his/herself or another person, another person intending to injure the injured worker, an off-duty (recreational/social/athletic) activity, or an act of God. A party should be prepared to discuss the following information at a BRC on a liability dispute.

Definition of Terms

"Injury" means damage or harm to the body, including infections from the injury. See §401.011(26).

"Compensable Injury" means an injury in the course and scope of employment. See §401.011(10).

"Course and Scope of Employment" means an activity performed by the injured worker originating in the work of the employer. See §401.011(12).

"Exceptions" listed under §406.032, provides specific situations that would relieve the insurance carrier for liability of a worker's compensation claim.

"Definition of Intoxication" is provided under §401.013.

"Alcoholic Beverage" is defined by Section 1.04, Alcoholic Beverage Code.

"Alcohol Concentration" is defined by Section 49.01, Penal Code (for injuries on or before 9/1/99) or by Section 49.01(2), Penal Code (for injuries on or after 9/1/99).

"Controlled Substance" or "Controlled Substance Analogue" is defined by Section 481.002, Health and Safety Code.

"Dangerous Drug" as defined by Section 483.001, Health and Safety Code.

"Abusable Glue or Aerosol Paint" as defined by Section 485.001, Health and Safety Code.

"Required Medical Exam" is an exam required by the Division to address the appropriateness of health care or other similar issues. See §408.004.

Division Forms

- **DWC-41**, "Supplement A - Beneficiary's Claim for Compensation (Rev. 10/04)," filed by family members of the deceased injured worker if the injury resulted in injured worker's death.
- **DWC-45**, "Request for a Benefit Review Conference Interim" (unrepresented injured workers may request a conference by contacting the Division in any manner).
- **DWC-150**, "Notice of Representation or Withdrawal of Representation," if the injured worker is represented by an attorney.

Medical Records

- Emergency room reports.
- Medical narratives from a doctor to establish an injury and the relationship between the claimed injury (or disease) and the injured worker's employment.
- A list of doctor's names that treated the injured worker, if more than one.
- Doctor's narrative resulting from a required medical examination, if any.
- To address an **"alcohol or drug intoxication"** dispute, medical information that establishes the injured worker's alcohol concentration was less than the stated limit under Section 49.01, Penal Code, or that the drug taken was prescribed by the injured worker's doctor would be helpful.

Additional Information

- Witness Statements – To address an **"alcohol or drug intoxication"** dispute, it is beneficial to present the names and/or statements of any co-workers to show the injured worker appeared to have the normal use of mental and physical faculties prior to the injury.
- A list of activities performed prior to the injury.
- To overcome a **"horseplay"** dispute, there must be information that shows the injured worker did not willfully engage in an act of horseplay and the horseplay was not a producing cause of the claimed injury.
- To overcome an **"act of God"** dispute, there must be information to show that the injured worker's employment exposed him/her to a greater risk of injury than the general public; the term implies the intervention of some cause not of human origin and not controlled by human power (i.e., tornado, lightning, etc.).
- To overcome a **"willful intention to injure him/herself or unlawfully injure another person"** dispute, there must be information (i.e., police report, witness statements) to show the injury occurred in the course and scope of employment and the injured worker did not willfully intend to injure his/herself or another person.
- To overcome an **"act of a third person intending to injure the injured worker"** dispute, there must be information (i.e., witness statements, police report) to show that the claimed injury did not result from personal animosity by a third person towards the injured worker, but was a result of the employment.
- To overcome an **"off-duty (recreational/social/athletic) activity"** dispute, there must be information to show whether the activity (not part of the normal work activity) was a reasonable expectancy of or was required by the employment (i.e., emails, pamphlets/fliers, witness statements, etc.).

Exchange of Information

- Must be exchanged with DWC and other parties per Rule 141.4.
- Must be exchanged no later than 14 days prior to a BRC (5 days if BRC was expedited).
- Bring information that is obtained **after** the exchange deadline to the conference in sufficient copies for filing and exchanging at the conference.